UNITED STATES
v.
CHARLES M. LEDFORD ET AL.

IBLA 79-263 Decided August 29, 1980

Appeal from decision of Administrative Law Judge R. M. Steiner, declaring the Ledcamp Mine placer mining claim null and void. Contest No. CA-4947.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Evidence: Generally -- Mining Claims: Determination of Validity

   The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

2. Mining Claims: Discovery: Generally

   A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

3. Mining Claims: Contests

   When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence.

4. Mining Claims: Contests

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

APPEARANCES: Roger Diefendorf, Esq., Foresthill, California, for contestees; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the Government.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Charles M. Ledford, Paul W. Campbell, Phillip A. James, John E. Ledford, and William Gene Ledford have appealed from a decision dated February 1, 1979, wherein Administrative Law Judge R. M. Steiner declared the Ledcamp Mine placer mining claim null and void for the reason that there is no discovery of a valuable mineral deposit within the limits of the claim.

The claim is located within the Tahoe National Forest and the Iowa hill mining district in Placer County, California. The contest was initiated at the request of the United States Forest Service when the Bureau of Land Management (BLM) filed a complaint April 11, 1978, charging that there were no minerals within the limits of the claim in sufficient quantities to constitute a valid discovery. The complaint also charged that the land embraced within the claim is nonmineral in character; the location is excessive in area and not limited to 20 acres for each individual claimant as allowed by section 2331 of the revised statutes (30 U.S.C. § 35 (1970)); and the claim is not held in good faith for mining purposes.

A hearing was held on the contest August 2, 1978, in Sacramento, California.

In his decision the Judge found that there was no discovery of a valuable mineral deposit. He therefore found it unnecessary to consider the remaining charges in the complaint.

[1] Appellants contend that the Government failed to establish a prima facie case of lack of discovery and that there was not substantial evidence for the Administrative Law Judge to find in favor of the contestant. We find no merit in either of these objections. This Board has considered the record in light of appellants' brief and we find the Judge's analysis and conclusions are amply supported by the evidence of record. We agree with the decision and adopt it as the decision of this Board. A copy of that decision is attached hereto.

[2] Appellants object to the Judge's application of the "prudent man" test contending it was based on an erroneous standard. Appellants misconstrue the requirements of discovery of a valuable mineral deposit. The discovery of a valuable mineral deposit within the limits of a mining claim is the sine qua non for a valid location. 30 U.S.C. §§ 23, 35 (1970). A discovery exists "where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine." Castle v. Womble, 19 L.D. 455 (1894); United States v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, 399 F.2 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). This test, known as the "prudent man test" has been refined to require a showing that the mineral in question can be extracted, removed, and presently marketed at a profit, the so-called "marketability test." United States v. Coleman, supra; Converse v. Udall, supra.

To establish the existence of a valuable mineral deposit on a claim there must be proof of continuous mineralization through the rock; the mere showing of disconnected small pods of mineral concentration, even of high value, does not satisfy the test. United States v. Zerwekh, 9 IBLA 172 (1973); United States v. Consolidated Mines and Smelting Co., A-30760 (September 19, 1967).

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made. Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Estate of W. C. West, 34 IBLA 44 (1978). Moreover, samples taken from a mining claim must be representative of the mineral deposit to be meaningful. United States v. Rosenkranz, 46 IBLA 109, 113 (1980); United States v. Bechthold, 25 IBLA 77 (1976).

In this case the record clearly supports the Judge's finding of no discovery. Appellants' evidence was purely speculative and insufficient to prove discovery. The one exhibit (Exh. D) which showed isolated high values of gold was not proven to be a representative sampling of the deposits on the claim and correctly was given little probative value in the Judge's overall analysis of the evidence.

Appellants argue on appeal that the Government failed to establish a prima facie case, charging that the Government mineral examiner's testimony was contradictory and not consistent with scientific principle and reason. This contention is not supported by the record.

[3] Appellants misconstrue the burden of the contestee in a mining contest. When the Government contests a mining claim on a charge

of no discovery, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to overcome this showing by a preponderance of the evidence. United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975), cert. denied, 423 U.S. 829, rehearing denied, 423 U.S. 1008 (1976); United States v. Springer, 491 F.2d 239 (9th Cir. 1974), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). It is thus crystal clear that the mining claimant, as the proponent of his claim's validity, pursuant to the Administrative Procedures Act (APA), 5 U.S.C. § 556 (1970), bears the risk of nonpersuasion. Foster v. Seaton, supra; United States v. Arcand, 23 IBLA 226 (1976).

[4] Once the Government contests a mining claim on a charge of no discovery, the Government must meet the initial burden of making its prima facie case. This burden is met where, as here, a Government mineral examiner samples a claim and gives his expert opinion that no discovery exists on the claim. United States v. Rosenkranz, supra, United States v. Bechthold, supra. Once this prima facie case is established, the burden shifts to the mining claimant to show by a preponderance of the evidence that a discovery has been made within the limits of the claim. Foster v. Seaton, supra at 838 (D.C. Cir. 1959); United States v. Ross, 40 IBLA 169 (1979).

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners. Mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim; nor do they have a duty to go beyond examining the discovery points of a claimant. Their function is to examine the discovery points made available by a claimant and to verify, if possible, the claimed discovery. Joseph J. Segna, 49 IBLA 73 (1980); United States v. Bryce, 15 IBLA 340 (1973).

The testimony of the Government's mining engineer, Henry W. Jones, that he had examined the Ledcamp Mine placer claim on four different occasions and taken samples from various representative sites which showed no values, constitutes a prima facie case that no discovery exists within the limits of the claim. The contestees simply did not present any credible evidence to overcome the Government's prima facie case. Furthermore, the testimony of contestees' own expert witness, Mr. Walter Hargrove, merely confirmed the Government's case. He testified (Tr. 77-92) that his own samples taken from the claim showed little or no gold colors, and at best, tiny specks of gold (Tr. 79, 80, 81, 91). The Judge properly concluded from this testimony that Hargrove's examination only revealed negligible amounts of gold. Accordingly, the Judge properly held the claim to be null and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Anne Poindexter Lewis
Administrative Judge

We concur:

_____
Edward W. Stuebing
Administrative Judge

_____
James L. Burski
Administrative Judge

February 1, 1979

United States of America,	:	Contest No. CA-4947
	:	
Contestant	:	Involving the LEDCAMP MINE PLACER
	:	MINING CLAIM, situated in
v.	:	portions of Secs. 6 and 7,
: T. 15 N., R. 11 E., M.D.M.		
Charles M. Ledford, et al.,	:	Placer County, California
	:	
Contestees	:	
	:	

DECISION

Appearances: Charles F. Lawrence, Esq.
Office of the General Counsel
U. S. Department of Agriculture
For the Contestant.

Roger Diefendorf, Attorney
Foresthill, California
For the Contestees.

Before: Administrative Law Judge Steiner.

This is an action brought by the Bureau of Land Management on behalf of the United States Forest Service (USFS) pursuant to the Hearings and Appeals Procedures of the Department of the Interior, 43 C.F.R. Part 4, to determine the validity of the above-named placer mining claim.

The Contestant filed a Complaint herein (CA-4947) on April 11, 1978, alleging, inter alia, as follows:

a. There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

b. The land embraced within the claim is non-mineral in character.

c. The location is excessive in area and not limited to 20 acres for each individual claimant as allowed by Sec. 2331 of the revised statutes (30 U.S.C. 35).

d. The claim is not held in good faith for mining purposes.

The Contestees filed a timely Answer denying the foregoing allegations of the Complaint on May 10, 1978. A hearing was held on August 2, 1978 in Sacramento, California.

The claim is situated in the Tahoe National Forest and the Iowa Hill Mining District in Placer county, California. (Ex. 2). Charles M. Ledford, John E. Ledford and Paul W. Campbell located the claim on October 19, 1970. (Ex. 1).

Henry W. Jones, after having been duly qualified as a mining engineer, testified that he examined the claim on four different occasions. The first examination was made on May 16, 1977.

There was little recent work found on the claim. (Tr. 14). Some backhoe work was discovered 300 feet south of the cabin. The materials exposed by the backhoe cut did not reveal the presence of any placer gold. A sample was taken there but it did not yield any gold colors. (Tr. 14, Ex. 9). An old caved adit one hundred feet west of the cabin was also examined. (Ex. 5). This adit was almost caved shut. The timbers were 40 to 50 years old and in a rotted condition. Another old adit further west is also in a state of disrepair. (Tr. 16, Ex. 13). He walked over the claim and was unable to locate any other workings. (Tr. 17). He took sample No. 3 on July 18, 1977. This sample did not disclose any black sand or gold colors. (Ex. 10 and 11). On July 28, 1978, the old adit near the cabin had been cleaned out but not completely opened up. (Tr. 18, 93). Sample No. 2 was taken from this adit. No values were found. (Tr. 20, Ex. 5 and Ex. 12). There were no other areas suitable for sampling on the claim. (Tr. 20). Mr. Jones did not find any evidence of modern day mining activities. (Tr. 21). The only mining equipment found was an old unusable sluice box near the caved adit just west of the cabin. (Tr. 22).

In Mr. Jones' opinion, a prudent man would not be justified in expending time, money and effort in attempting to develop this claim. (Tr. 23)

Charles N. Ledford, a co-locator of the claim, testified on his own behalf. He stated the cabin on the claim has been there since 1885. The adits on the claim were accessible when he located the claims in 1970. He constructed a flume and sluice box and cleaned out an adit. He has been working on the claims almost every weekend for three to four years. (Tr. 32). He stated that acts of vandalism which damaged the cabin and the adits began in 1974. After the opening of the easternmost adit had caved in, Mr. Ledford stopped trying to develop that adit. (Tr. 35).

On cross-examination, Mr. Ledford admitted he has never stepped out the claim corners. He had no knowledge as to whether the corners are in place. When asked where he had performed his discovery work, Mr. Ledford indicated that Exhibit 9 depicts a portal which he had cleaned out. (Tr. 40). He further stated he made no attempt to reveal the points of value on the claim to the Forest Service. He stated, "I haven't made no effort at all to the Forest Service. I didn't know it was any of their business." (Tr. 44). Mr. Ledford intends to develop the two caved adits west of the cabin. (Tr. 45).

William Gene Ledford also testified that the assessment work on the claims had been performed every year. (Tr. 47). He stated that someone had been destroying the mining equipment on the claim in 1974. (Tr. 48). A photo depicting an entrance to an adit was submitted into evidence. (Ex. C). It would be impossible to mine very far back into this adit because of the high water conditions. (Tr. 53). He stated that gold recovered from the claim was used to purchase timber and other mining equipment. (Tr. 56). The cost of replacing the damaged equipment would be about $2,000. (Tr. 57). Several hundred days of work has been performed on the claim since 1977. (Tr. 63).

Philip James was called as a witness by the Contestees. He stated he has been assisting the Ledfords in developing the claim since 1970. (Tr. 66). He found gold on the claim in 1977. (Tr. 67). He produced a vial containing 1.75 grams of gold 1/ (Ex. D). The gold was recovered from two cubic feet of dirt and gravel which was removed from the floor 300 feet inside the upper tunnel that is just west of the cabin. (Tr. 68).

Mr. James stated on cross-examination that he has been on the claim at least every other weekend from the end of May until October each year since the claim was located. (Tr. 69). When asked how he recovered the

1/ The weight of the gold contained in the vial was stipulated to by the parties.

gold in the vial, he stated that he collected loose material from the bottom of the adit and placed it in a five-gallon bucket. He had to make two trips to carry out the material. (Tr. 70). He also claimed to have recovered enough gold from the same adit to pay for their damaged mining equipment. However, he could not remember the exact amount of gold recovered nor the quantity of material removed to produce the gold. Likewise, he did not know precisely where this other gold was found or the length of time expended in its recovery. (Tr. 73). He stated that the adit is accessible although the entrance is small. (Tr. 74). He could not estimate how much minable material remains in the adit. (Tr. 75).

Walter Hardgrove, a civil and mining engineer was called to testify for the Contestees. He had had experience in examining gold mines. (Tr. 77). He had examined the Ledcamp claim on two different dates. (Tr. 78). During his inspections he found the entrance to the adit near the cabin (Ex. B) difficult to get through. (Tr. 79). He stated, "the portal was pretty well blocked, and the water was, I'm guessing, about two and a half to three feet deep on the level back ten or fifteen feet from the portal." (Tr. 79). Mr. Hardgrove took a sample from the bottom of the adit. He found no gold colors whatsoever. Another sample was taken outside of the portal. A post-hole digger was used to get down to firmer material. He recovered one tiny gold color and three bits of amalgam from this sample. This sample weighed three to four pounds. (Tr. 79).

Mr. Hardgrove went 300 feet into the adit west of the cabin and found it caved. He took samples from the sides of the adit at a half a dozen different places but recovered only extremely fine bits of gold visible only through a ten power glass. (Tr. 80). He expected to find better values than those already found. (Tr. 21). He calculated the acreage of the claim to be 64.46 acres. (Tr. 82).

In Mr. Hardgrove's opinion, which is based partly on the testimony presented by Philip James and William Ledford, he concluded that "there is a very good chance that a bonanza can be developed there. I have seen a lot of money spent on much less promising things that have worked out, and I believe that there is a mine there." (Tr. 83).

On cross-examination, Mr. Hardgrove recalculated the acreage of the claim and found that it is in excess of 82 acres. (Tr. 84). Before any more mining could be done, the adit would have to be cleaned out. (Tr. 85). He stated that it is expensive to excavate a tunnel when mining (Tr. 86). He agreed that the adits on the claims appeared to have been abandoned. (Tr. 87). Furthermore, he has no idea as to what amount of gold-bearing material remains exposed in any of the adits. (Tr. 88).

Under the mining laws of the United States [30 U.S.C. § 22 et seq. (1976)], a valid location of a placer mining claim requires discovery of a valuable mineral deposit within the limits of the claim. The rule as to what constitutes a valid discovery has been stated as follows:

> "* * * Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. * * *." Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid. When it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid. United States v. Zweifel, 508 F. 2d. 1150, 1157. (10th Cir. 1975), United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 234 (1974); Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959).

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute a discovery of a valuable mineral deposit. Converse v. Udall, 329 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970). The ultimate burden of proving discovery is always upon the mining claimant. United States v. Springer, supra.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings. United States v. Ruth Arcand, et al., 23 IBLA 226 (1976); United States v. Becker, 33 IBLA 301 (1978).

Returns which are so meager that they will not attract the labor and means of a person of ordinary prudence are not sufficient to demonstrate discovery of a valuable mineral deposit. United States v. Ruth Arcand et al., supra; United States v. Frank and Wamta Melluzzo, 38 IBLA 214 (1978).

The Contestant, by the testimony of its expert witness, has established, prima facie, that there are no mineral deposits presently exposed on the claims which would justify a person of ordinary prudence in the further expenditure of his labor and means in the development of the subject claim. Mr. Jones took samples from the areas on the claim that indicated mining activity and his results revealed no gold values whatsoever.
(Tr. 20).

The Contestees have failed to present sufficient evidence to rebut the Contestant's prima facie case. On the contrary, the Contestee's own witness, Mr. Hardgrove, testified that his samples from the claim revealed only negligible amounts of gold. (Tr. 80). He affirmed Mr. Jones' determination that the adits on the claim were in disrepair and required further work. (Tr. 79). Additionally, he could not estimate the amount of gold bearing material exposed on the claim. (Tr. 88). Consequently, I find his opinion concerning the reasonable prospect of success in developing this claim unconvincing.

In addition, I find that the small amount of gold (Ex. D) introduced into evidence by the Contestees has limited probative value. Isolated high values or nonrepresentative mineral samples cannot prove the existence of a valuable discovery. United States v. Kingdon, 36 IBLA 11 (1978); United States v. Bechthold 25 IBLA 77 (1976). Although the Contestee contends this gold was recovered from the floor of the adit near the cabin, samples taken by Mr. Hardgrove and Mr. Jones from the same adit revealed only negligible amounts of gold. It has not been shown that the gold contained in the vial (Ex. D) is representative of any significant exposure of gold-bearing material.

It is concluded that there has been no discovery of a valuable mineral deposit within the limits of the subject claim.

Since the foregoing conclusion is dispositive of this proceeding, it is unnecessary to rule on the remaining issues set forth in the Complaint.

Accordingly, the Ledcamp Mine placer mining claim is hereby declared null and void.

R. M. Steiner
Administrative Law Judge

Enclosure: Information pertaining to appeals procedures.

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